

## Moschella, William

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**From:** Elwood, Courtney  
**Sent:** Tuesday, March 06, 2007 10:11 AM  
**To:** Moschella, William; Sampson, Kyle; Hertling, Richard; Goodling, Monica  
**Subject:** Call from Bill Kelley on QFR responses on USA firings

**Importance:** High

Bill called this morning and spoke to me in Kyle's absence. Chris Oprison told Bill that DOJ was preparing QFR answers that addressed contacts between WH, Hill, and DOJ on USAs. He wants to make sure that he is given, in advance, whatever DOJ plans to say in response to these questions. I told him that QFR responses are always circulated through OMB and WHCO, and I am sure that happen in this case.

I know nothing 'bout this, so I pass this along to those of you who may.

I suggest that Kyle or someone else give Bill a call for clarification, if necessary.

*Courtney Simmons Elwood  
Deputy Chief of Staff and  
Counselor to the Attorney General  
U.S. Department of Justice  
(w) 202.514.2267  
(c)  
(fax) 202.305.9687*

## Moschella, William

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**From:** Hertling, Richard  
**Sent:** Tuesday, March 06, 2007 10:12 AM  
**To:** Elwood, Courtney; Moschella, William; Sampson, Kyle; Goodling, Monica  
**Subject:** RE: Call from Bill Kelley on QFR responses on USA firings

Yes, and nothing is moving very quickly. I emailed Oprison about that subject this morning.

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**Sent:** Tuesday, March 06, 2007 10:11 AM  
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(fax) 202.305.9687*

## Moschella, William

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**From:** Moschella, William  
**Sent:** Tuesday, March 06, 2007 10:13 AM  
**To:** Hertling, Richard  
**Subject:** RE: Oral statement

**Attachments:** moschellafinal oral.doc



moschellafinal  
oral.doc (38 KB...

<b>Tracking:</b>	<b>Recipient</b>	<b>Read</b>
	Hertling, Richard	Read: 3/6/2007 10:14 AM

**Moschella, William**

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**From:** Gibbs, Landon M. [Landon\_M.\_Gibbs@who.eop.gov]  
**Sent:** Tuesday, March 06, 2007 10:16 AM  
**To:** Silas, Adrien  
**Cc:** Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William; Scott-Finan, Nancy  
**Subject:** FW: Moschella Oral Testimony  
**Attachments:** moschellafinal.2.doc; moschellafinal.1.doc



moschellafinal.2.doc  
c (31 KB)



moschellafinal.1.doc  
c (32 KB)

The oral testimony attached that Will just sent has been cleared by the EOP. We are still holding on the prepared testimony.

Thanks,

Landon

**Moschella, William**

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**From:** Scolinos, Tasia  
**Sent:** Tuesday, March 06, 2007 10:49 AM  
**To:** Moschella, William  
**Cc:** Roehrkasse, Brian  
**Subject:** RE: Moschella Oral Testimony

can you send me the talking points on each of the US Attorneys that you are going to use? thanks

---

**From:** Moschella, William  
**Sent:** Tuesday, March 06, 2007 9:48 AM  
**To:** 'Oprison, Christopher G.'  
**Cc:** Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.; Scolinos, Tasia; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica  
**Subject:** RE: Moschella Oral Testimony

All, attached is the final document. We accepted all of Chris's proposed changes. I have made some other small minor tweaks and those are tracked so that you can see them in "moschellafinal.1.doc" and the clean version is "moschellafinal.2.doc".

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**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Monday, March 05, 2007 9:33 PM  
**To:** Moschella, William  
**Cc:** Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.  
**Subject:** RE: Moschella Oral Testimony

Will - attached please find a redlined version with suggested edits. Thanks

Chris

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**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, March 05, 2007 8:43 PM  
**To:** Oprison, Christopher G.  
**Cc:** Moschella, William  
**Subject:** RE: Moschella Oral Testimony

Thx, Chris. Will now has the pen, so please send the comments to him directly (but cc me, if you would). Thx!

---

**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Monday, March 05, 2007 8:40 PM  
**To:** Sampson, Kyle  
**Subject:** RE: Moschella Oral Testimony

we are gathering comments and should have this back to you shortly

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, March 05, 2007 7:25 PM

DAG000001104

**To:** Kelley, William K.  
**Cc:** Oprison, Christopher G.  
**Subject:** Moschella Oral Testimony  
**Importance:** High

Bill, can you forward this on to Dana and Cathie (and whomever else in the White House you deem appropriate) for review and approval?. Thanks!

<<Moschella Oral Statement.doc>>

Kyle Sampson  
Chief of Staff  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
(202) 514-2001 wk.  
(202) 305-5289 cell  
kyle.sampson@usdoj.gov

**Moschella, William**

---

**From:** Oprison, Christopher G. [Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Tuesday, March 06, 2007 11:37 AM  
**To:** Gibbs, Landon M.; Silas, Adrien  
**Cc:** Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William; Scott-Finan, Nancy  
**Subject:** RE: US Atty - ODAG Tstmny

Note on page 3 of the redline a question regarding the characterization of "approximately half of the U.S. Attorneys."

-----Original Message-----

**From:** Gibbs, Landon M.  
**Sent:** Tuesday, March 06, 2007 11:35 AM  
**To:** 'Adrien.Silas@usdoj.gov'  
**Cc:** Green, Richard E.; Simms, Angela M.; 'Richard.Hertling@usdoj.gov'; 'William.Moschella@usdoj.gov'; 'Nancy.Scott-Finan@usdoj.gov'; Oprison, Christopher G.  
**Subject:** FW: US Atty - ODAG Tstmny

The EOP approves the attached version of the testimony.

Thanks,

Landon Gibbs  
Deputy Associate Director  
Office of Counsel to the President  
(202) 456-5214

**Moschella, William**

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**From:** Hertling, Richard  
**Sent:** Tuesday, March 06, 2007 12:50 PM  
**To:** 'Oprison, Christopher G.'; Gibbs, Landon M.; Silas, Adrien  
**Cc:** Green, Richard E.; Simms, Angela M.; Moschella, William; Scott-Finan, Nancy  
**Subject:** RE: US Atty - ODAG Tstmny

The number is a little under 50 percent (44 percent). I think we are changing the testimony to read "more than 40 percent."

-----Original Message-----

**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Tuesday, March 06, 2007 11:37 AM  
**To:** Gibbs, Landon M.; Silas, Adrien  
**Cc:** Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William; Scott-Finan, Nancy  
**Subject:** RE: US Atty - ODAG Tstmny

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**To:** 'Adrien.Silas@usdoj.gov'  
**Cc:** Green, Richard E.; Simms, Angela M.; 'Richard.Hertling@usdoj.gov'; 'William.Moschella@usdoj.gov'; 'Nancy.Scott-Finan@usdoj.gov'; Oprison, Christopher G.  
**Subject:** FW: US Atty - ODAG Tstmny

The EOP approves the attached version of the testimony.

Thanks,

Landon Gibbs  
Deputy Associate Director  
Office of Counsel to the President  
(202) 456-5214

**Moschella, William**

---

**From:** Scott-Finan, Nancy  
**Sent:** Tuesday, March 06, 2007 12:54 PM  
**To:** Goodling, Monica; Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Hertling, Richard  
**Subject:** FW: US Atty - ODAG Tstmny  
**Attachments:** Moschella Testimony.doc



Moschella  
testimony.doc (86 KB)

Do we want to accept the changes from OMB? Thanks.

-----Original Message-----

**From:** Gibbs, Landon M. [mailto:Landon\_M.\_Gibbs@who.eop.gov]  
**Sent:** Tuesday, March 06, 2007 11:35 AM  
**To:** Silas, Adrien  
**Cc:** Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William; Scott-Finan, Nancy; Oprison, Christopher G.  
**Subject:** FW: US Atty - ODAG Tstmny

The EOP approves the attached version of the testimony.

Thanks,

Landon Gibbs  
Deputy Associate Director  
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**Moschella, William**

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**From:** Hertling, Richard  
**Sent:** Tuesday, March 06, 2007 12:55 PM  
**To:** Scott-Finan, Nancy; Goodling, Monica; Sampson, Kyle; Moschella, William; Elston, Michael (ODAG)  
**Subject:** RE: US Atty - ODAG Tstmny

I already directed Adrien to accept all WHCO changes. We have no time to dicker over these.

-----Original Message-----

**From:** Scott-Finan, Nancy  
**Sent:** Tuesday, March 06, 2007 12:54 PM  
**To:** Goodling, Monica; Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Hertling, Richard  
**Subject:** FW: US Atty - ODAG Tstmny

Do we want to accept the changes from OMB? Thanks.

-----Original Message-----

**From:** Gibbs, Landon M. [mailto:Landon\_M.\_Gibbs@who.eop.gov]  
**Sent:** Tuesday, March 06, 2007 11:35 AM  
**To:** Silas, Adrien  
**Cc:** Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William; Scott-Finan, Nancy; Oprison, Christopher G.  
**Subject:** FW: US Atty - ODAG Tstmny

The EOP approves the attached version of the testimony.

Thanks,

Landon Gibbs  
Deputy Associate Director  
Office of Counsel to the President  
(202) 456-5214

## U.S. ATTORNEY ASSESSMENT

**Kevin Ryan (NDCA):** Appointed Aug. 2, 2002; term expired Aug. 2, 2006  
*EOUSA General Counsel Scott Schools was appointed interim USA; 11 years as career federal prosecutor/First Assistant/manager w/ 9 months as interim USA in SC; plus 5 years in private practice*

- Significant management problems have manifested during his tenure.
- The district has become one of the most fractured offices in the Nation.
- Morale has fallen to the point that it is harming our prosecutorial efforts.
- The USA has lost the confidence of many of his career prosecutors.
- The problems here have been so significant that it has required multiple on-site visits by management and personnel experts from EOUSA.
- Although our Evaluation and Review Staff (EARS) reports are not an evaluation of the performance of a United States Attorney by his or her supervisor – in this case, we had two office-wide evaluations that detailed the problems within the management of this office, which dictated the need for a change.

**Carol Lam (SDCA):** Appointed Nov. 18, 2002; term expired Nov. 18, 2006  
*Executive AUSA Karen Hewitt is interim USA; 6 years as career federal  
prosecutor/manager; 8 years as government litigator; 3 years in private practice*

- This is one of our largest offices in the country. In addition to all of the complex legal issues that occur in these extra-large districts, San Diego also faces a tremendous responsibility to effectively manage a border.
- She continually failed to perform in relation to significant leadership priorities – these were priorities that were well-known within the Department. They were discussed at our annual mandatory USA conferences, in speeches by Department leaders, in memos, in conference calls, and in a host of other ways.
- First, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, she failed to tackle this responsibility as aggressively and as vigorously as we expected and needed her to do. At the end of the day, we expected more.
- Ex: The President has made clear that he expects strong immigration enforcement efforts, but SDCA has only brought a fraction of the cases that other significant border districts are doing. While some good numbers on alien smuggling:
  - Only 422 illegal re-entry cases in 2005 where AZ did 1,491 and NM did 1,607;
  - Only 470 illegal entry cases in 2005 where AZ did 3,409 and NM did 1,194;
  - In June 2006, Sen. Feinstein wrote a letter to the AG complaining about the high prosecution guidelines which kept these numbers low.
- Writing about her concern for Ms. Lam's "restrictive prosecutorial guidelines," Sen. Feinstein stressed "the importance of vigorously prosecuting these type of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught."
- More than 18 other members of Congress complained about her "catch and release" policies and her failure to let alien smugglers back out onto the street by raising prosecution guidelines too high.
- Second, the President and both Attorneys General in this Administration made clear that, after terrorism, gun crime is the top priority and an important tactic to fighting violent crime.
- SDCA has only brought a fraction of the cases of other extra-large districts. Despite its size and population, it ranks 91 out of 93 districts in terms of average numbers of firearms cases since FY 2000 (doing only an average of 18 cases).

- Third, rather than focusing on the management of her office, this USA spent a significant amount of her time trying cases – this is discouraged in extra-large districts, because these are offices that require full-time managers.

**John McKay (WDWA):** Appointed Oct. 30, 2001; term expired Oct. 30, 2005  
*Criminal Chief Jeff Sullivan was appointed interim USA -- 5 years as a career federal prosecutor after 27 years as the county prosecutor and 3 years in private practice.*

- Demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes that were not in the best interest of the Department and without regard to the Department's appropriate channels and methods of evaluating policy.
- Placed extensive focus, and engaged in a significant amount of travel outside of the district to advocate policy changes, rather than focusing on running the office.
- The Department was aware that his district had a bad record with downward departures, failure to appeal downward departures, and that his policy focus was distracting him from the work of the office.

**Paul Charlton (AZ):** Appointed Nov. 14, 2001; term expired Nov. 14, 2005  
*Chief AUSA Daniel Knauss was appointed interim USA; 32 ½ years as a career federal prosecutor, including 2 months as interim USA in that office in the past*

- Repeatedly took actions contrary to DOJ policy and procedure.
- Failed to implement the AG's instruction on a death penalty case, when federal law places the decision with the AG.
- Like McKay, Charlton demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes without regard to the Department's appropriate channels and methods of evaluating policy. He tried to mandate the FBI to institute a new policy to videotape all interviews with suspects without regard to the national policy taken by the FBI or all of the many reasons why this raises significant concerns that require substantial discussion.
- Despite the national focus the Attorney General requested for offices to focus on the federal crime of obscenity, which coarsens society, McKay failed to support the Department's prosecution of a case that was developed within his district.
- Worked outside of proper channels in seeking resources, without regard to the process or the impact his action would have on our other USAOs.

- [Contrary to guidance from Main Justice that it was poor judgment, he put an employee on "leave without pay" status so she could become a paid press secretary for a Republican running in the 2002 gubernatorial campaign against Governor Napolitano, the former U.S. Attorney. (Shortly thereafter, the employee left the USAO permanently.)]

**David Iglesias (NM):** Appointed Oct. 17, 2001; term expired Oct. 17, 2005  
*First AUSA Larry Gomez is Acting USA; 27 years as career federal prosecutor/manager plus 2 years as local prosecutor*

- One of our large offices, New Mexico is a critically-important border district.
- Again, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, he failed to tackle this responsibility as aggressively and as vigorously as we expected and needed her to do.
- There was a perception that he traveled a lot, but that even when he was in the office he still delegated a vast majority of the management to his First Assistant. We expect our U.S. Attorneys, particularly those in critical districts, to be hands-on managers working hard to advance the work of the Department.
- Quite simply, now that Mr. Iglesias finished his four-year term (and then some) this was an area where we thought we could make a change to bring more dynamic leadership to the office.

**Dan Bogden (Nevada):** Appointed Nov. 2, 2001; term expired Nov. 2, 2005  
*First AUSA Steve Myhre is Acting USA; 9 years as federal prosecutor/manager plus 5 years of private sector litigation and 8 years in the Marine Corps Judge Advocate*

- Similarly, Nevada is what we consider to be a very important district that was underserved.
- Given the large tourist population that visits each year, it's well-known that Las Vegas could present a target for terrorism. It has also struggled with violent crime, drugs, and organized crime. This is an office where we have the right to expect excellence and aggressive prosecution in a number of priority areas.
- Despite the national focus the Attorney General requested for offices to place on the federal crime of obscenity, which coarsens society, the USA failed to support the Department's prosecution of a case that was developed within his district.

- This is another district where, now that Mr. Bodgen has finished his four-year term (and then some), we thought we could make a change to bring more dynamic leadership to the office.

**Margaret Chiara (WDMI):** Appointed Nov. 2, 2001; term expired Nov. 2005  
*Decision pending on who will lead the office until a new Senate-confirmed USA is identified.*

TRY TO AVOID SINCE NO PUBLIC STATEMENTS FROM CHIARA:

- We have briefed privately the reasons for the change in this district; however, Ms. Chiara has not made any public statements at this time, and out of respect for her silence, we'd say only that this office presented some management issues.

IF PUSHED:

- Under the USA's tenure, the office has become fractured, morale has fallen, and the USA has lost the confidence of several members of the leadership team and some career prosecutors.
- The problems here have required an on-site visit by management experts from our EOUSA to visit and mediate with members of the leadership team, and in the end, it was decided that new leadership would be appropriate to unite the office.

## FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

### NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

### VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 13 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

## **ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY**

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

## TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

### Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
  - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

### U.S. Attorneys Serve at the Pleasure of the President:

- United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

### The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation.

The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

**The Administration Is Nominating Candidates for U.S. Attorney Positions:**

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 13 vacancies have been created. Of those 13 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for 1 position – all in consultation with home-state Senators.

**The 13 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:**

- In 4 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 7 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

**Amending the Statute Was Necessary:**

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.
- The statute was amended for several reasons:
  - 1) The previous provision was constitutionally-suspect;
  - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
  - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.
- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

U.S. ATTORNEY RESIGNATIONS

DISTRICT:	LEADERSHIP ASSESSMENT:	EARS:
<p>Dan Bodgen (NV)                      Term expired: Nov. 2, 2005                      Called: Dec. 7, 2006                      Resignation: Feb. 28, 2007</p> <p><i>Sen. Ensign</i>  <i>• Veg strong</i>  <i>• interviewing</i>  <i>• looking to get name</i></p>	<ul style="list-style-type: none"> <li>• Very important district being underserved (Las Vegas target for terrorism; violent crime; drugs/organized crime).</li> <li>• Resistant to at least one leadership priority (obscenity task force).</li> </ul> <p><i>• Not adequately leading the office</i>  <i>↳ Not a lot of energy</i></p>	<ul style="list-style-type: none"> <li>• March 3-7, 2003</li> <li>• USA Bogden is highly regarded by the federal judiciary, the law enforcement and civil client agencies, and the staff of the USAO.</li> <li>• AUSAs failed to consistently follow DOJ policies with regard to firearms prosecutions (924(c)), reporting adverse decisions and appellate practice.</li> </ul>
<p>Paul Charlton (AZ)                      Term expired: Nov. 14, 2005                      Called: Dec. 7, 2006                      Resignation: Jan. 30, 2007</p>	<ul style="list-style-type: none"> <li>• Repeated instances of insubordination, actions taken contrary to instructions, and actions taken that were clearly unauthorized.</li> <li>• Worked outside of proper channels without regard to the approved process or impact on others (i.e. budget resources).</li> <li>• Ex: multiple failures to follow AG's instruction on death penalty.</li> <li>• Ex: required FBI to videotape interviews despite FBI policy.</li> <li>• Ex: refusal(?) to comply with a leadership priority (obscenity).</li> <li>• Ex: contrary to guidance from Main Justice that it was poor judgment, put an employee on "leave without pay" status so she could become a paid press secretary for the 2002 gubernatorial campaign (supporting the candidate who was challenging Napolitano).</li> </ul>	<ul style="list-style-type: none"> <li>• December 8-12, 2003</li> <li>• USA Charlton is well respected by the USAO staff, investigative and civil client agencies, local law enforcement community, Native American Nations, and judiciary regarding his integrity, professionalism, and competence.</li> <li>• The USA's and FAUSAs adherence to the chain of command in the Organizational Chart has led to a perception by some that he is inaccessible.</li> <li>• Perception among AUSAs that management is not open to suggestions of criticism.</li> <li>• Judges complain about inadequate AUSA of complaints prior to</li> </ul>

		<p>submission.</p> <ul style="list-style-type: none"> <li>• AUSAs fail to follow DOJ policies regarding charging and pleas; lack knowledge of DOJ prior approval requirements for media and attorney subpoenas.</li> <li>• Corporate fraud not being addressed in Phoenix or Tucson.</li> <li>• Line civil AUSAs compromise bankruptcy claims without authority to do so.</li> <li>• Case management system not used/contains inaccurate information.</li> <li>• On one occasion, office erroneously appointed SAUSA an AUSA and did so without required security papers or drug test.</li> </ul>
<p><i>Margot Chian</i>                  (NOT PUBLIC)                  Term expired: Nov. 2005                  Called: Dec. 7, 2006                  Resignation: anticipated Mar. 9, 2007                  (NOT PUBLIC)  <i>Western Michigan</i></p>	<ul style="list-style-type: none"> <li>• During USA's tenure, the office has become fractured, morale has fallen, and the USA has lost the confidence of the leadership team and some career prosecutors.</li> <li>• The problems here have required an on-site visit by management experts from our EOUSA to visit and mediate with members of the leadership team.</li> </ul> <p><i>• Leadership was fractured and USA had constant tension within management team</i></p> <p><i>• We have heard constant complaints</i></p> <p><i>• Had to send a management expert to mediate b/w her &amp; her management team</i></p> <p><i>• New person to lead entire office</i></p>	<ul style="list-style-type: none"> <li>• July 12-16, 2004</li> <li>• USA is a well regarded, hard-working, and capable leader who has the respect and confidence of the judiciary, the agencies, and USAO personnel. Made significant improvements over prior, dysfunctional leadership.</li> <li>• CRM division (3 managers rather than 1 CRM chief) hampers supervision/management of the division,</li> <li>• Structure prevents management from effectively managing resources in most areas of prosecution; no</li> </ul>

	<p>1.</p>	<p>assurance that DOJ priorities/policies being carried out.</p> <ul style="list-style-type: none"> <li>• AUSAs with 5 yrs experience exempt from most review (e.g., intake decisions, plea agreements) and thus no idea whether those line AUSAs follow DOJ policies.</li> <li>• Noticeable differences in workload/productivity contribute to discontent in CRM division.</li> </ul>
<p>David Iglesias (NM) Term expired: Oct. 17, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007</p>	<ul style="list-style-type: none"> <li>• Critically-important border district being underserved.</li> <li>• Perceived to be an "absentee landlord" who relies on the FAUSA to run the office.</li> <li>• Border Security is very important</li> <li>• Border District</li> <li>• USA must be leading the office</li> <li>• Term was expired and thought we could do better.</li> </ul>	<ul style="list-style-type: none"> <li>• November 14-18, 2006</li> <li>• USA Iglesias is experienced in legal, management, and community relations work and is respected by the judiciary, agencies, and staff.</li> <li>• (Report does note heavy reliance on FAUSA to manage operations.)</li> <li>• Poor morale exists in Las Cruces due to appointment of inexperienced supervisor (and growing immigration caseload).</li> <li>• Insufficient resources assigned to growing criminal caseload.</li> </ul>
<p>Carol Lam (SDCA) Term expired: Nov. 18, 2006 Called: Dec. 7, 2006 Resignation: Feb. 15, 2007</p>	<ul style="list-style-type: none"> <li>• Despite the significant management challenges and needs of an extra-large border district with complex litigation, she has focused too much attention and time on personally trying cases than managing the USAO.</li> <li>• Failure to perform in relation to significant leadership priorities (i.e. immigration and gun</li> </ul>	<ul style="list-style-type: none"> <li>• February 7-11, 2005</li> <li>• USA Lam is an effective manager of the USAO and a respected leader for the District. She is active in Department activities and is respected by the judiciary, law enforcement agencies, and the USAO staff.</li> </ul>

	<p>crime).</p> <ul style="list-style-type: none"> <li>• Ex: The President has made clear that he expects strong immigration enforcement efforts, but SDCA has only brought a fraction of the cases that other significant border districts are doing. While some good numbers on alien smuggling:             <ul style="list-style-type: none"> <li>- Only 422 illegal re-entry cases in 2005 where AZ did 1,491 and NM did 1,607;</li> <li>- Only 470 illegal entry cases in 2005 where AZ did 3,409 and NM did 1,194;</li> <li>- In June 2006, Sen. Feinstein wrote a letter to the AG complaining about the high prosecution guidelines which kept these numbers low.</li> </ul> </li> <li>• Ex: The President has made clear he expects gun crime prosecution to be a significant effort, but SDCA has only brought a fraction of the cases of other extra-large districts. Despite its size and population, it ranks 91 out of 93 districts in terms of average numbers of firearms cases since FY 2000 (doing only an average of 18 cases).</li> </ul>	<ul style="list-style-type: none"> <li>• While quality of cases is high, the number of immigration cases per AUSA work year statistically lower than other border USAOs; quantity of some proactive investigative matters/cases is modest and not consistent with Department priorities (e.g., crimes against children).</li> <li>• Morale issues noted in general crimes section.</li> <li>• Problems with intake of firearms referrals – ATF complains that it takes too long to get a prosecution decision.</li> <li>• Indictment review too time consuming, esp. in routine cases.</li> <li>• AUSAs unfamiliar with DOJ policy requiring presentation of exculpatory evidence to grand juries.</li> <li>• Information security issues (improper transportation and disposal of computer media).</li> </ul>
<p>John McKay (WDWA)            Term expired: Oct. 30, 2005            Called: Dec. 7, 2006            Resignation: Jan. 31, 2007</p>	<ul style="list-style-type: none"> <li>• Pattern of <del>insubordination</del>, poor judgment, and demonstration of temperament issues in seeking policy changes without regard to appropriate methods or tactics.</li> <li>• Extensive focus and travel outside of district to advocate policy changes, rather than proper focus on running the office.</li> </ul>	<ul style="list-style-type: none"> <li>• March 13-17, 2006</li> <li>• USA McKay is an effective, well-regarded, and capable leader of the USAO and the District's law enforcement community.</li> <li>• Some personnel not handling grand jury material appropriately; other information security issues.</li> </ul>

		<ul style="list-style-type: none"> <li>• Noncompliance with Ashcroft memo noted.</li> <li>• Downward departures for substantial assistance not documented as required by DOJ policy.</li> </ul>
<p>Kevin Ryan (NDCA)                  Term expired: Aug. 2, 2006                  Called: Dec. 7, 2006                  Resignation: Feb. 16, 2007</p>	<ul style="list-style-type: none"> <li>• During his tenure, the office has become the most fractured office in the Nation, morale has fallen to the point that it is harming our prosecutorial efforts, and the USA has lost the confidence of many of the career prosecutors who are leaving the office.</li> <li>• The problems here have required <u>multiple on-site visits by management and personnel experts from EOUSA.</u></li> </ul>	<ul style="list-style-type: none"> <li>• Special: March 27-31, 2006</li> <li>• Overall, USA Ryan effectively manages relations with the outside agencies, the local community, and the judiciary, although some judges expressed concern that he does not adequately communicate with them.</li> <li>• Although, under USA Ryan's leadership, the USAO effectively manages its substantive work, his management style and practices have contributed, at least in part, to low morale among a number of the line AUSAs in the Criminal Division in the San Francisco office.</li> </ul>
<p>Bud Cummins (EDAR)                  Term expired: Jan. 9, 2006  <i>(In April 2006, Cummins repeated previous statements that he would not stay for the whole second term and that he was leaving for private sector later that year)</i>                  Called: June 2006                  Resigned: December 2006</p>	<ul style="list-style-type: none"> <li>• He had completed his four-year term and indicated he would not stay for the entire second term, so we worked on developing a replacement plan.</li> </ul>	<p>[Requested]</p>

## TRANSITIONS IN ARKANSAS

February 2004:

- Tom Gean resigns as U.S. Attorney for the Western District of Arkansas.
- The DOJ/WHCO panel interviews four individuals for the Western District of Arkansas vacancy: Bob Balfe, John Threet, Stephen Tabor, and Tim Griffin. Griffin is panel's first choice, and Griffin likely would have been approved by the JSC at that time; however, before he could be selected, Griffin withdrew his name from consideration because he had determined to accept an offer to join the staff of the Bush-Cheney reelection campaign.

December 30, 2004:

- *Arkansas Times* article notes that Cummins had said in 2004 that, with four kids to put through college, he was likely to begin exploring career options. Report states that Cummins said that it wouldn't be "shocking" for there to be a change in his office before the end of President Bush's second term.

February 27, 2006-March 1, 2006:

- At the U.S. Attorneys Conference, Cummins openly discusses his intention to pursue private sector opportunities later that year.

Spring 2006:

- The White House Counsel asks if there will be a U.S. Attorney vacancy in the Eastern District of Arkansas, as Tim Griffin will be returning from Iraq and is interested in being appointed as U.S. Attorney in that district.

June 2006:

- EOUSA Director Mike Battle calls Cummins, inquires of his intentions to pursue private sector employment, and asks him to resign.

August 2006:

- First press reports regarding Cummins' impending resignation appear.
- Cummins indicates that he began discussing his departure with Main Justice in June.

September 27, 2006:

- Griffin is named Special Assistant U.S. Attorney in the Eastern District of Arkansas.

December 20, 2006:

- Cummins resigns.
- The Attorney General appoints Griffin as interim U.S. Attorney for the Eastern District of Arkansas.

## WHO IS TIM GRIFFIN?

Recently, *The New York Times* criticized the appointment of Tim Griffin as the U.S. Attorney for the Eastern District of Arkansas and in doing so noted that Mr. Griffin “has a resume that includes working for Karl Rove and heading up opposition research for the Republican National Committee.” The *Times* characterized Mr. Griffin’s legal record with one word: “thin.” Mr. Griffin’s resume deserves a closer look.

First and foremost, Mr. Griffin is a lawyer, a *cum laude* graduate of Tulane Law School, in New Orleans, and is a member of both the Arkansas and Louisiana bars.

Mr. Griffin has served as an officer—currently a major—in the U.S. Army Judge Advocate General’s (JAG) Corps for over ten years. Like all JAGs, he has routinely practiced the basic legal skills that many lawyers never acquire: drafting wills, writing opinions and advising soldiers. In 2002, his supervisor wrote: “CPT Griffin has the gift of easily identifying legal issues and drafting clear, concise, and correct opinions. . . . CPT Griffin is a born litigator.”

In fact, in 2005, Mr. Griffin was serving as Special Assistant to President Bush when he was mobilized to active duty for a year. He moved to Fort Campbell, Kentucky to serve as an Army prosecutor. At Fort Campbell, he prosecuted numerous criminal cases. One of those cases, U.S. v. Mikel, drew national interest after Private Mikel attempted to murder his platoon sergeant and fired upon his unit’s early morning formation.

After the Mikel case, Mr. Griffin was allowed to fill a need for a JAG officer in Mosul, Iraq. He was assigned to the 501<sup>st</sup> Special Troops Battalion (STB), 101<sup>st</sup> Airborne Division and detailed to the 172d Stryker Brigade Combat Team (SBCT) Brigade Operational Law Team (BOLT), for which he was awarded the Combat Action Badge and the Army Commendation Medal.

Mr. Griffin served the Department of Justice as Special Assistant to then-Assistant Attorney General, Criminal Division, Michael Chertoff and on three separate occasions as a federal prosecutor, including from 2001-2002 in the Eastern District of Arkansas where he now serves. During that stint, he prosecuted a variety of federal cases with an emphasis on firearm and drug cases. He also organized the District’s Project Safe Neighborhoods (PSN), the Bush Administration’s initiative to reduce firearm-related violence by promoting close cooperation between state and federal law enforcement, and served as the PSN coordinator.

He served from 1997-1999 as Senior Counsel to the Government Reform Committee, U.S. House of Representatives. Immediately following law school, he practiced law for Jones, Walker, et al., of New Orleans, one of the largest law firms in the South.

Mr. Griffin is a *cum laude* graduate of Hendrix College in Conway, Arkansas, where he received his B.A., and attended graduate school in Modern European History at Pembroke College, Oxford University, in Oxford, England.

## U.S. ATTORNEY RESIGNATIONS & REPLACEMENTS

<b>DISTRICT:</b>	<b>ACTING/INTERIM SELECTION:</b>	<b>STATUS OF POTENTIAL NOMINEE:</b>
Dan Bodgen (NV) Term expired: Nov. 2, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007	(FAUSA has declined to be acting USA due to his pending casework; identifying and interviewing other candidates)	Sen. Ensign will recommend potential candidates.
Paul Charlton (AZ) Term expired: Nov. 14, 2005 Called: Dec. 7, 2006 Resignation: Jan. 30, 2007	Chief AUSA Daniel Knauss was appointed interim USA: <ul style="list-style-type: none"> <li>• 34 ½ years as a federal prosecutor.</li> <li>• 2 years as an adjunct law professor.</li> </ul>	Senators McCain and Kyl recommended one candidate; candidate was interviewed 1/16/07.
<b>(NOT PUBLIC)</b> Term expired: Nov. 2, 2005 Called: Dec. 7, 2006 Resignation: Mar. 9, 2007 <b>(NOT PUBLIC)</b>	(Not yet interviewing, because vacancy is not public)	When USA announces resignation, the Administration will seek recommendations of potential candidates from the WH-designated Republican lead.
David Iglesias (NM) Term expired: Oct. 17, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007	(Interviewed two career prosecutors to date; decision pending)	Sen. Domenici has recommended potential candidates; interviews were held 1/17/07.
Carol Lam (SDCA) Term expired: Nov. 18, 2006 Called: Dec. 7, 2006 Resignation: Feb. 15, 2007	(Interviewed four career prosecutors to date; decision pending)	Parsky Commission will recommend potential candidates.
John McKay (WDWA) Term expired: Oct. 30, 2005 Called: Dec. 7, 2006 Resignation: Jan. 31, 2007	Criminal Chief Jeffrey Sullivan was appointed interim USA: <ul style="list-style-type: none"> <li>• 27 years as a state/local prosecutor;</li> <li>• 5 years as a federal prosecutor;</li> <li>• 3 years in private practice.</li> </ul>	Rep. Reichert has recommended potential candidates; interviews were held 2/9/07.
Kevin Ryan (NDCA) Term expired: Aug. 2, 2006 Called: Dec. 7, 2006 Resignation: Feb. 16, 2007	(Identifying and interviewing qualified career prosecutors; decision pending)	Parsky Commission will recommend potential candidates.

<p>Bud Cummins (EDAR) Term expired: Jan. 9, 2006</p> <p><i>(In April 2006, Cummins repeated previous statements that he would not stay for the entire second term and that he would be leaving for the private sector soon.)</i></p> <p>Called: June 2006 Resigned: December 2006</p>	<p>Tim Griffin:</p> <ul style="list-style-type: none"> <li>• 2 years as a federal prosecutor (one year at DOJ plus one year full-time in the military);</li> <li>• 10 years in the JAG Corps, U.S. Army Reserve (now a Major);</li> <li>• 6 months as special assistant to the Assistant Attorney General for the Criminal Division;</li> <li>• 1 year as associate independent counsel, <i>In re: Henry Cisneros</i>;</li> <li>• 2 years as senior investigative counsel, House Gov't Reform Committee;</li> <li>• 1 year private practice;</li> <li>• Additional experience as special assistant to the President and RNC research director.</li> </ul>	<p>Administration is consulting with Senators Lincoln and Pryor.</p>
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**VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT**  
**AUTHORITY:**

Since March 9, 2006, there have been 16 new USA vacancies that have arisen. They have been filled as noted below.

For 5 of the 16 vacancies, the FAUSA in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting USA;
- **Southern District of Illinois** – FAUSA Randy Massey is acting USA (Phillip Green was nominated last Congress, but he was not confirmed);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting USA (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting USA (Sharon Potter was nominated and confirmed); and
- **Southern District of Georgia** – FAUSA Edmund A. Booth, Jr. is acting USA.

For 1 vacancy, the Department first selected the FAUSA to lead the office under the VRA, but she retired a month later. At that point, the Department selected another employee to serve as interim USA until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting USA until she retired and Matt Dummermuth was appointed interim USA.

For 10 of the 16 vacancies, the Department selected another Department employee to serve as interim USA until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim when incumbent USA resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim USA when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim USA when incumbent USA resigned to be appointed Assistant Attorney General for National Security;
- **District of Nebraska** – Joe Stecher was appointed interim USA when incumbent USA resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim USA when incumbent USA resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim USA when incumbent USA and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim USA when incumbent USA resigned;
- **District of Arizona** – Dan Knauss was appointed interim USA when incumbent resigned;

- **Northern District of California** – Scott Schools was appointed interim USA when incumbent resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim USA when incumbent resigned.

\*\*\*\*\*

In addition to the 11 uses of the AG's appointment authority noted above, there have been 3 additional uses since March 9, 2006, for vacancies that were created before that point. In total, the AG's appointment authority has been used 14 times since the authority was amended.

In 2 of the remaining cases, the FAUSA had been serving as acting USA under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the AG appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In the remaining case, the FAUSA had been serving as acting USA under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim USA until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

## CURRENT & UPCOMING VACANCIES

### **Current vacancies (16):**

- **Maine** (since 2001) – still continuing to request names from senators
- **Southern District of West Virginia** (since 2005) - waiting on names from congresswoman
- **Eastern District of Tennessee** (since 2005) – candidate selected but waiting on home-state senator sign-off
- **Alaska** (since 1/06) – waiting on names from senators
- **Southern District of Illinois** (since 2005 or 3/06, depending) - nomination sent to last Congress but not approved; on hold
- **Western District of Missouri** (since 3/06) - nomination pending
- **Puerto Rico** (since 6/06) - nomination pending
- **District of Columbia** (since 9/06) - candidate in background review
- **Nebraska** (since 10/06) - candidate in background review
- **Middle District of Tennessee** (since 10/06) - waiting on additional names from senators
- **Central District of California** (since 11/06) – working with home-state commission
- **Eastern District of Arkansas** (since 12/06) - candidate in background
- **Northern District of Iowa** (since 12/06) - candidate selected but waiting on home-state senator sign-off
- **District of Arizona** (since 1/07) – would like to request more names from senators
- **Western District of Washington** (since 1/07) – interviews being scheduled
- **Southern District of Georgia** (since 2/7/07) – waiting on additional names from senators

### **Publicly-announced or known upcoming resignations (8):**

- **Nevada**, Dan Bogden, 2/28/07 – waiting on names
- **Southern District of California**, Carol Lam, 2/15/07 – waiting on names
- **Northern District of California** Kevin Ryan, 2/16/07 – waiting on names
- **New Mexico**, David Iglesias, 2/28/07 – candidate selected but waiting on home-state senator sign-off
- **Montana**, Bill Mercer, pending confirmation of new position
- **Northern District of Indiana**, Joe Van Bokkelen, pending confirmation of new position
- **Eastern District of New York**, Roslynn Mauskopf, pending confirmation of new position
- **Eastern District of Michigan**, Steve Murphy, pending confirmation of new position

### **Non-public resignation (1):**

- **Western District of Michigan**, Margaret Chiara, 3/07

**VACANCIES OVER THE PAST YEAR:  
(13 since March of 2006)**

- **There are many reasons why a U.S. Attorney may retire or resign.**
- **Nearly half were confirmed or appointed to new federal positions:**
  - ✓ Paul McNulty, EDVA, 3/06 (to become DAG)
  - ✓ Tom Johnston, NDWV, 4/06 (to become federal district court judge)
  - ✓ Frank Whitney, EDNC, 6/06 (to become federal district court judge)
  - ✓ Bert Garcia, PR, 6/06 (to return family to home state of Texas)
  - ✓ Ken Wainstein, DC, 9/06 (to become AAG of NSD)
  - ✓ Mike Heavican, NE, 10/06 (to become Chief Justice on the state's Supreme Court)
  - ✓ Lisa Godbey Wood, SDGA, 2/07 (to become federal district court judge)
- **Others left to pursue private sector opportunities (i.e. Jim Vines, MDTN) or retired at the end of a long career (i.e. Charles Larson, NDIA).**

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**Full list of resignations since last March in reverse date order (14 total):**

- Lisa Godbey Wood, SDGA (confirmed to be federal district court judge, but not yet appointed)
- *John McKay, WDVA, 1/07 (has said he will teach at a law school)*
- *Paul Charlton, AZ, 1/07 (going into private practice)*
- *Bud Cummins, EDAR, 12/06 (pursuing private sector opportunities)*
- Chuck Larson, NDIA, 12/06 (to take federal retirement)
- Deb Yang, CDCA, 11/06 (to go into private practice)
- Jim Vines, MDTN, 10/06 (to move to D.C. and go into private practice)
- Mike Heavican, NE, 10/06 (to become Chief Justice on the state's Supreme Court)
- Ken Wainstein, DC, 9/06 (to become AAG of NSD)
- Frank Whitney, EDNC, 6/06 (to become federal district court judge)
- Bert Garcia, PR, 6/06 (to return family to home state of Texas)
- Tom Johnston, NDWV, 4/06 (to become federal district court judge)
- Todd Graves, WDMO, 3/06 (started his own firm)
- Paul McNulty, EDVA, 3/06 (to become DAG)

**Additional U.S. Attorneys are pending confirmation/appointment to new federal positions (4):**

- Bill Mercer, MT (to become Associate Attorney General)
- Joe Van Bokkelen, NDIN (to become federal district court judge)
- Roslynn Mauskopf, EDNY (to become federal district court judge)
- Steve Murphy, EDMI (to become federal court of appeals judge)

**Henderson, Charles V**

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**From:** Moschella, William  
**Sent:** Monday, February 26, 2007 6:23 PM  
**To:** Henderson, Charles V  
**Subject:** FW: Updated documents

**Attachments:** FACT SHEET - USA appointments.pdf; TPS - US Attorney vacancy-appointment points.pdf; 02-06-07 McNulty Transcript re US Attorneys.doc; Examples of Difficult Transition Situations.pdf; WHY 120 DAYS IS NOT REALISTIC.doc; Griffin Talkers.doc; USA prosecution only stats.pdf; Arkansas Transition.doc; Griffin narrative.doc; US Attorney chart - leave-behind.doc; VACANCIES AFTER AMENDMENT TO AG appt authority.doc; US Attorney leadership assessment.doc; Vacancies over the past year.doc

pp

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**From:** Goodling, Monica  
**Sent:** Monday, February 26, 2007 2:03 PM  
**To:** Moschella, William  
**Subject:** Updated documents

Please note that Jeff Taylor may be nominated tomorrow, which will affect several of these documents. I'll recirculate at that point. Thanks.

**FOR PUBLIC USE**



FACT SHEET - USA appointments....



TPS - US Attorney vacancy-appro...



02-06-07 McNulty Transcript re...



Examples of Difficult Transiti...



WHY 120 DAYS IS NOT REALISTIC....



Griffin Talkers.doc (33 KB)



USA prosecution only stats.pdf...

**NON-PUBLIC FOR YOUR INFORMATION:**



Arkansas Transition.doc (30 KB)



Griffin narrative.doc (26 KB)



US Attorney chart - leave-behi...



VACANCIES AFTER AMENDMENT TO A...



US Attorney leadership assessm..



Vacancies over the past year.d...

**FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS**

**NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY**

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The <sup>16</sup>~~15~~ nominations are:

- Erik Peterson – Western District of Wisconsin;
- Charles Rosenberg – Eastern District of Virginia;
- Thomas Anderson – District of Vermont;
- Martin Jackley – District of South Dakota;
- Alexander Acosta – Southern District of Florida;
- Troy Eid – District of Colorado;
- Phillip Green – Southern District of Illinois;
- George Holding – Eastern District of North Carolina;
- Sharon Potter – Northern District of West Virginia;
- Brett Tolman – District of Utah;
- Rodger Heaton – Central District of Illinois;
- Deborah Rhodes – Southern District of Alabama;
- Rachel Paulose – District of Minnesota;
- John Wood – Western District of Missouri; and
- Rosa Rodriguez-Velez – District of Puerto Rico.

12/16 continued

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

**VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY**

nominated 5  
4/6 confirmed

Since March 9, 2006, there have been 16 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 5 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, see 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- Central District of California – FAUSA George Cardona is acting United States Attorney
- ✓ Southern District of Illinois – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- ✓ • **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- ✓ • **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed); and
- **Southern District of Georgia** – FAUSA Edmund A. Booth, Jr. is acting USA.

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 10 of the 16 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- ✓ **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- ✓ • **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- ✓ • **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and

- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

#### **ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY**

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 14 times since the authority was amended in March 2006.

In 2 of the 14 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 10 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;

- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

## **TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL**

### **Overview:**

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
  - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

### **U.S. Attorneys Serve at the Pleasure of the President:**

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

**The Administration Must Ensure an Effective Transition When Vacancies Occur:**

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

### **The Administration Is Nominating Candidates for U.S. Attorney Positions:**

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 16 vacancies have been created. Of those 16 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

### **The 16 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:**

- In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 9 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

### **Amending the Statute Was Necessary:**

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on

the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:
  - 1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
  - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
  - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.
  
- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.
  
- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.





## Subcommittee on Commercial and Administrative Law

### **Hon. Linda T. Sánchez**

SÁNCHEZ, Linda T., (sister of Loretta Sanchez), a Representative from California; born in Orange, Orange County, Calif., January 28, 1969; B.A., University of California, Berkeley, Calif.; J.D., University of California, Los Angeles, Calif., 1995; lawyer, private practice; elected as a Democrat to the One Hundred Eighth Congress (January 3, 2003-present).

### **Hon. John Conyers, Jr.**

CONYERS, John, Jr., a Representative from Michigan; born in Detroit, Wayne County, Mich., May 16, 1929; attended Detroit public schools; B.A., Wayne State University, Detroit, Mich., 1957; LL.B., Wayne State Law School, Detroit, Mich., 1958; lawyer, private practice; National Guard, 1948-1950; United States Army, 1950-1954; United States Army Reserves, 1954-1957; staff, United States Representative John D. Dingell, Jr., of Michigan, 1958-1961; general counsel for three labor locals in Detroit, 1959-1964; executive board member, Detroit, Mich., American Civil Liberties Union, 1964 to present; executive board member, Detroit, Mich.; NAACP, 1963 to present; referee for Michigan workmen's compensation department, 1961-1963; elected as a Democrat to the Eighty-ninth and to the nineteen succeeding Congresses (January 3, 1965-present); one of the managers appointed by the House of Representatives in 1988 to conduct the impeachment proceedings against Alcee Lamar Hastings, judge of the United States District Court for the Southern District of Florida; chair, Committee on Government Operations (One Hundred First through One Hundred Third Congresses).

### **Hon. Hank Johnson**

JOHNSON, Hank, a Representative from Georgia; born in Washington, D.C., October 2, 1954; B.A., Clark Atlanta University, Atlanta, Ga., 1976; J.D., Texas Southern University, Houston, Tex., 1979; lawyer, private practice; DeKalb County, Ga., board of commissioners, 2001-2006; elected as a Democrat to the One Hundred Tenth Congress (January 3, 2007-present).

### **Hon. Zoe Lofgren**

LOFGREN, Zoe, a Representative from California; born in San Mateo, San Mateo County, Calif., December 21, 1947; B.A., Stanford University, Stanford, Calif., 1970; J.D., Santa Clara University School of Law, Santa Clara, Calif., 1975; lawyer, private practice; faculty, Santa Clara University School of Law, Santa Clara, Calif., 1978-1980; staff for United States Representative Don Edwards of California; executive director, Community Housing Developers; elected as a Democrat to the One Hundred Fourth and four succeeding Congresses (January 3, 1995-present).

### **Hon. William D. Delahunt**

DELAHUNT, William D., a Representative from Massachusetts; born in Quincy, Norfolk County, Mass., July 18, 1941; graduated from Thayer Academy, Braintree, Mass.; B.A., Middlebury College, Middlebury, Vt., 1963; J.D., Boston College School of Law, Chestnut Hill, Mass., 1967; United States Coast Guard Reserves, 1963-1971; lawyer, private practice; member of the Massachusetts state house of representatives, 1973-1975; Norfolk County, Mass., district attorney, 1975-1996; elected as a Democrat to the One Hundred Fifth and to the three succeeding Congresses (January 3, 1997-present).

### **Hon. Melvin L. Watt**

WATT, Melvin L., a Representative from North Carolina; born in Steele Creek, Mecklenburg County, N.C., August 26, 1945; York Road High School, Charlotte, N.C., 1963; B.S., University of North Carolina, Chapel Hill, N.C., 1967; J.D., Yale University School of Law, New Haven, Conn., 1970; lawyer, private practice; member of the North Carolina state senate, 1985-1987; elected as a Democrat to the One Hundred Third and to the five succeeding Congresses (January 3, 1993-present).

### **Hon. Steve Cohen**

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**Hon. Chris Cannon**

CANNON, Christopher B., a Representative from Utah; born in Salt Lake City, Salt Lake County, Utah, October 20, 1950; B.S., Brigham Young University, Provo, Utah, 1974; attended Harvard School of Business, Cambridge, Mass., 1974-1975; J.D., Brigham Young University, Provo, Utah, 1980; lawyer, private practice; solicitor, Department of Interior, 1983-1986; business owner; business executive; Utah Republican Party finance chairman, 1992-1994; elected as a Republican to the One Hundred Fifth and to the three succeeding Congresses (January 3, 1997-present); one of the managers appointed by the House of Representatives in 1998 to conduct the impeachment proceedings of President William Jefferson Clinton.

**Hon. Jim Jordan**

JORDAN, Jim, a Representative from Ohio; born in Troy, Miami County, Ohio, February 17, 1964; graduated from Graham High School, St. Paris, Ohio, 1982; B.S., University of Wisconsin, 1986; M.A., Ohio State University, 1991; J.D., Capital University, Columbus, Ohio, 2001; lawyer, private practice; member of the Ohio state house of representatives, 1995-2000; member of the Ohio state senate, 2001-2007; elected as a Republican to the One Hundred Tenth Congress (January 3, 2007-present).

**Hon. Ric Keller**

KELLER, Richard (Ric), a Representative from Florida; born in Johnson City, Washington County, Tenn., September 5, 1964; graduated from Boone High School, Orlando, Fla., 1982; B.A., East Tennessee State University, Johnson City, Tenn., 1986; J.D., Vanderbilt University, Nashville, Tenn., 1992; lawyer, private practice; elected as a Republican to the One Hundred Seventh and to the succeeding Congress (January 3, 2001-present).

**Hon. Tom Feeney**

FEENEY, Tom, a Representative from Florida; born in Abington, Montgomery County, Pa., May 21, 1958; B.A., Penn State University, State College, Pa., 1980; J.D., University of Pittsburgh, Oakland, Pa., 1983; lawyer, private practice; member of the Florida state house of representatives, 1990-1994, 1996-2002; elected as a Republican to the One Hundred Eighth Congress (January 3, 2003-present).

**Hon. Trent Franks**

FRANKS, Trent, a Representative from Arizona; born in Uravan, Montrose County, Colo., June 19, 1957; attended Ottawa University, Ottawa, Kans.; business owner; member of the Arizona state house of representatives, 1985-1987; elected as a Republican to the One Hundred Eighth Congress and to the succeeding Congress (January 3, 2003-present).



## LINDA SANCHEZ

Congresswoman Linda Sánchez was sworn into Congress on January 7th, 2003, and is currently serving her third term in the U.S. House of Representatives. She represents the 39th Congressional District of California, which includes the communities of Artesia, Cerritos, Florence, Hawaiian Gardens, Lakewood, La Mirada, Long Beach, Lynwood, Paramount, South Gate, Watts, Whittier, and Willowbrook.

Congresswoman Sánchez is the first Latina in history to serve on the Judiciary Committee. She is the first woman to serve as Chair of the Subcommittee on Commercial and Administrative Law, and she also sits on the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. The Judiciary Committee considers civil and criminal judicial reform, civil liberties, constitutional amendments, and immigration and naturalization. It also has jurisdiction over the U.S. Department of Justice as well as federal aid to local law enforcement.

A co-founder of the Labor and Working Families Caucus, Congresswoman Sánchez serves on the House Committee on Education and Labor. She is a member of the Subcommittee on Early Childhood, Elementary and Secondary Education, which will lead efforts this year to improve high quality public schools by revising the No Child Left Behind Act. She will also work on the nation's retirement security crisis on the Subcommittee on Health, Labor, Employment and Pensions.

Congresswoman Sánchez also serves on the House Committee on Foreign Affairs. She is a member of the Western Hemisphere Subcommittee, which will focus on rebuilding international relationships in Central and South America, a region that has seen a recent surge in anti-U.S. sentiment. She also sits on the Subcommittee on Europe, which is focused on restoring strong strategic relationships with allies across Europe.

Sánchez is a strong advocate for California's working families. She is committed to reducing crime, making schools safe, providing quality education and affordable health care, improving our economy by creating new opportunities, and decreasing unemployment. Since coming to Congress, she has brought back more than \$20 million in federal investments in her district. In the 109th Congress, the House of Representatives passed her bill to develop systems that will improve the local water quality supply and prevent ocean pollution.

The sixth of seven children, Sánchez was born in the City of Orange to immigrant parents from Mexico. She attended the University of California, Berkeley, where she earned a Bachelor of Arts in Spanish Literature with an emphasis in Bilingual Education. After working her way through school as a bilingual aide and ESL instructor, she earned her law degree from U.C.L.A.

After law school, she worked in a private practice before going to



Congresswoman Sanchez discusses military issues with Whittier area Marine.

## RECOMMENDED LINKS

- [House Democrats Site](#)
- [Congressional Hispanic Caucus](#)
- [Congressional Labor and Working Families Caucus](#)

work for the International Brotherhood of Electrical Workers (IBEW) Local 441 and the National Electrical Contractors Association (NECA). Prior to coming to Congress, Sánchez served as the Executive Secretary-Treasurer for the Orange County Central Labor Council, AFL-CIO. Congresswoman Sánchez is still an active and card-carrying member of IBEW Local 441.

Sánchez' service in the U.S. House of Representatives is historic as she proudly works with her sister Loretta, Congresswoman from the 47th District of California. They are the first sisters and the first women of any relation to ever serve in Congress. Sánchez resides in Lakewood with her dogs Baloo, Pip and Chavo.



## John Conyers, Jr.

Representative John Conyers, Jr., a Detroit Democrat, was re-elected to the 14th Congressional District in November 2006, to his 21 term in the U.S. House of Representatives.

The district covers all of Highland Park and Hamtramck, as well as large portions of Detroit and Dearborn. Due to the Congressional redistricting of 2000 Representative Conyers also now represents the Down River communities of Melvindale, Allen Park, Southgate, Riverview, Trenton, Gibraltar, and Grosse Ile.

Having entered the House of Representatives in 1964, Mr. Conyers is the second most senior member in the House of Representatives. After serving as Chairman of the House Committee on Government Operations (now renamed Government Reform) from 1989 until 1994, Congressman Conyers was elected by his congressional colleagues to lead, as Chairman, the pivotal House Committee on the Judiciary. In addition to its oversight of the Department of Justice (including the FBI) and the Federal Courts, the Judiciary Committee has jurisdiction over copyright, constitutional, consumer protection, and civil rights issues.

Congressman Conyers was also a member of the Judiciary Committee in its 1974 hearings on the Watergate impeachment scandal and played a prominent role in the recent impeachment process, giving him the distinction as the only Judiciary Committee Member to have served on both panels.

Congressman Conyers is also one of the 13 founding members of the Congressional Black Caucus (CBC) and is considered the Dean of that group. Formed in 1969, the CBC was founded to strengthen African-American law makers ability to address the legislative concerns of Black and minority citizens.

In Mr. Conyers' 40 plus years in Congress, some of his major accomplishments include: the Violence Against Women Act of 1994, the Motor Voter Bill of 1993, the Martin Luther King Holiday Act of 1983, the Alcohol Warning Label Act of 1988, the Jazz Preservation Act of 1987, and was the driving force behind the Help America Vote Act of 2002.

## **Working for the People of Detroit and Down River Communities**

Congressman Conyers is dedicated to improving the lives of the people of the 14th Congressional District. During 107th Congress, he secured an appropriation totaling over one million dollars for the Detroit Medical Center. Hutzel Hospital received \$800,000 for general renovation; and the Rehabilitation Institute of Michigan received an appropriation of \$450,000. In addition, Rep. Conyers intervened to prevent abuse of women in Michigan prisons. He held a series of public meetings to hear testimony by both former inmates and staff on the sexual misconduct of male guards in Michigan's prisons. The public meetings and contact with the U.S. Department of Justice led to the creation of a policy in Michigan prisons that restricts male correctional officers from guarding women who reside in private quarters. Conyers also

convened a job fair for ex-offenders in conjunction with the City of Detroit Employment Connection. This innovative partnership was established to reduce the recidivism rate among ex-offenders and to ensure that they have access to adequate employment once released from prison.

## **Providing Leadership on Judiciary Issues**

As Chairman of the on Judiciary Committee, Representative Conyers has introduced and endorsed legislation to advance civil liberties, ensure equal protection and access to the voting booth and combat violence against women. Since September 11th, he has worked to strike a balance between keeping our country safe from terrorism and protecting the civil liberties of our citizens. Conyers has supported the Administration and proper law enforcement and intelligence authorities' efforts to prevent terrorism. At the same time, he has worked to make sure that civil liberties and civil rights are preserved in the process. During the 107th Congress, Conyers introduced the "Military Tribunal Authorization Act of 2002," which provides lawmakers with an opportunity to exercise their constitutional authority to define and regulate the use of military tribunals. To address organizational problems in the FBI, which recently came to light, he introduced the "Federal Bureau of Investigation Reform Act of 2002". This legislation would improve the agency's management and structure as well as protect whistleblowers who report FBI wrongdoing.

In response to problems experienced by voters during the 2000 Presidential Election, Representative Conyers co-authored comprehensive election reform legislation to end discriminatory election practices, which was enacted in October 2002. This bill advances civil rights and protects voting rights, among other provisions, by establishing federal minimum voting rights standards for election machines and requiring voting sites to be made accessible to those with disabilities.

As an outspoken critic of violence against women, Congressman Conyers was also a lead sponsor of the Violence Against Women Act (VAWA), which was enacted in 1994 and re-authorized in 2001. It provides funding for federal, state, and local programs to combat domestic violence and sexual assault. In addition, Mr. Conyers is the principal author of the "End Racial Profiling Act," legislation that would ensure that the rights of all Americans are protected by banning racial profiling nationwide and by requiring all federal, state and local law enforcement agencies to take administrative steps to eliminate the practice. He also introduced the "Hate Crimes Prevention Act," legislation would place a wide range of hate crimes under federal jurisdiction and allow for enhanced support by the Federal government of local investigation and prosecution.

## **Fighting for Michigan's Working Families**

Representative Conyers has spent his entire career fighting for Michigan's working families. As a supporter of the UAW, Congressman Conyers is well aware of the struggles that affect working families. With families facing skyrocketing health care costs, rising unemployment and an outdated minimum wage, Conyers continues to fight for equal pay for women and minorities, a raise in the minimum wage, and full employment for all Americans. He opposes the Bush

Administration's attempts to roll back worker safety standards, the elimination of overtime in favor of flex-time, and efforts to undermine workers' collective bargaining rights in both the public and private sectors. Currently, Mr. Conyers is working on legislation that would protect workers' pensions and health care in cases of bankruptcy such as those involving Enron, Worldcom, and National Steel.

## **Working for Quality, Affordable Healthcare**

For more than three decades, Congressman Conyers has led efforts in Congress to reform the health care system. He is the founder and chairman of the Congressional Universal Health Care Task Force, a 45 member caucus whose mission is to pass universal health care legislation by 2005. This legislation would guarantee every American access to affordable, comprehensive, quality health care. The caucus introduced House Concurrent Resolution 99, which has the support of over 450 grassroots organizations across the country, and dozens of Members of Congress. He recently introduced the United States National Health Insurance Act, H.R. 676, a Medicare For All Single Payer bill which has the endorsement of over 4000 physicians nationally. Further, Representative Conyers introduced the Resident Physician Safety Protection Act in order to reduce the hours that resident physicians work, so they can perform at optimal levels. The American Medical Association and the Accreditation Council for Graduate Medical Education have adopted major provisions of the bill.

## **International Engagement**

In a world currently dominated by globalization, ethnic conflicts and terrorism, Mr. Conyers is committed to promoting peace and understanding. He has worked diligently to turn back the war effort against Iraq. Last Congress, he voted against Joint House Resolution 114 which gave the President the authority to invade Iraq. Additionally, he signed on as a plaintiff to a lawsuit which asserted that the resolution was unconstitutional and therefore not valid, since the Constitution specifically designates that only Congress can declare war. Additionally, Mr. Conyers has spoken at anti-war demonstrations and written letters to the Administration asking that it meet with the Members of Congress who oppose the war. Further, Mr. Conyers also met with Secretary General Kofi Annan to reinforce to the Secretary that many members of Congress fully support the United Nations and encouraged him to remain focused in asserting the UN role as an arbiter of peace.

Another country which Mr. Conyers has worked diligently to help is the country of Haiti. In the 108th Congress, Mr. Conyers is an original co-sponsor of a Haiti Trade bill, which will provide duty-free status to Haitian garments that are either assembled or knit to shape in Haiti, as long as the yarns and fabrics are from the US or from countries with which the US has an agreement. Mr. Conyers is committed to directing multi-lateral funding to Haiti, specifically, one hundred fifty four million dollars in loans that have been approved by the Inter-Development World Bank (IDB) but have yet to be released. In this regard, Mr. Conyers met with the Board of Directors at the IDB and the Undersecretary of Treasury. In addition, he has written numerous letters to the State Department, the President and to Members of Congress in an attempt to get the much needed funds to Haiti.

## Personal and Professional

Born (1929) and raised in Detroit, Rep. Conyers was educated in city's public school system. After serving in the National Guard and the United States Army Corps of Engineers in the Korean War, he returned to Michigan where he earned both his Bachelor of Arts (1957) and Juris Doctor (1958) degrees at Wayne State University.

He is the recipient of many awards for leadership, including a Southern Christian Leadership Conference Award, which was presented to him by Dr. Martin Luther King, Jr. He has also been awarded a number of honorary degrees from colleges and universities throughout the nation. He is married to the former Monica Esters. Mr. and Mrs. Conyers have two sons, John III and Carl Edward.



## Biography for Representative Hank Johnson Representative's Official Biography

Prior to his election to the 110th Congress, Congressman Johnson served as a DeKalb County Commissioner in Georgia. He is immediate past chairman of the Board of Commissioners' Budget Committee and is a past member of the DeKalb Community Services Board. He led the DeKalb Board of Commissioners/Board of Education Legislative Liaison Committee, where he was a staunch proponent for quality public education.



A partner with Johnson & Johnson Law Group LLC, Hank has practiced law in Decatur, GA for 27 years focusing on criminal and civil litigation. For 12 years he was a Judge in the Magistrate Court of DeKalb County. He also sat by designation as a State Court Judge, presiding over civil and criminal jury trials.

One of Hank's most rewarding accomplishments as a criminal defense attorney came in the DeKalb murder case of State vs. Jones, where Hank won the freedom of a client who had been wrongfully convicted of murder and sentenced to death.

The Georgia Supreme Court appointed Hank to serve as a Special Master to conduct grievance proceedings instituted against Georgia lawyers accused of ethics violations. He is a member of the State Bar of Georgia, Georgia Association of Criminal Defense Attorneys and the Georgia Lawyers Foundation. He has also served as a member of the Board of Trustees of the DeKalb County Law Library. He is the co-founder and past president of the DeKalb Lawyers Association.

A graduate of Clark College (Clark Atlanta University) and Texas Southern University's Thurgood Marshall School of Law, Hank is the Immediate Past President of the Clark Atlanta University Alumni Association, DeKalb Chapter. He has volunteered with several community groups, including the board of directors for Antioch Urban Ministries Inc. and the Southwest DeKalb High School Mock Trial Team. Hank is also member of the Omega Psi Phi Fraternity. He is married to Attorney Mereda Davis Johnson and has two children, Randi and Alex, who attend DeKalb County Public Schools.

In his first run for Congress, Hank unseated a 12-year incumbent in a widely watched runoff primary (59% to 41%) and went on to win the General Election with 75% of the vote. He is part of the historic 110th Congress' Democratic Freshman Class that wrested control of the House away from the opposition party and elected the first female Speaker of the House.

Hank has been appointed to the Armed Services, Judiciary, and Small Business committees.



## **Biography of Congresswoman Zoe Lofgren California, 16th District**

### **Personal Information**

- Born on December 21, 1947 in San Mateo, California.
- Married to John Marshall Collins in 1978; mother of two children.

### **Education**

- K-12 public schools, Palo Alto, California.
- B.A., Political Science, Stanford University, 1970.
- J.D., cum laude, University of Santa Clara School of Law, 1975.

### **Professional Career**

- Served as Staff Assistant to her predecessor, Congressman Don Edwards, 1970-1978. Worked on impeachment proceedings, the Equal Rights Amendment, and creation of the Don Edwards National Wildlife Refuge in the South San Francisco Bay.
- Practiced immigration law as a partner in the firm of Webber & Lofgren, 1978-1980.
- Taught immigration law at University of Santa Clara School of Law, 1977-1980.
- Served on Santa Clara County Board of Supervisors, 1981-1994.

### **Community Involvement**

- First Executive Director of Community Housing Developers, a non-profit community-based housing developer, San Jose, 1978.
- Elected to Board of Trustees of San Jose-Evergreen Community College District Board, 1979.

### **U.S. Congress**

- Elected in 1994 as only freshman Democrat from west of the Rocky Mountains.
- Serves on Committee on Homeland Security:
  - Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, Ranking Minority Member
  - Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity
  - Subcommittee on Management, Integration, and Oversight
- Serves on Committee on the Judiciary:
  - Subcommittee on Courts, the Internet, and Intellectual Property
  - Subcommittee on Immigration, Border Security, and Claims
- Serves on Committee on House Administration:

### **Key Legislative Initiatives**

- Introduced legislation to accelerate the development of fusion as a long-term energy source, which was included in the comprehensive House energy bill (H.R. 4).
- Successfully fought to initiate the "e-rate" that provides affordable Internet access for schools, libraries, and rural health centers.
- Served as Democratic floor manager for the 21st Century Patent Improvement Act.
- Initiated the SAFE Act to ease export control on encryption.



**William D. Delahunt** represents the Tenth Congressional District of Massachusetts – which includes Cape Cod, the Islands of Martha's Vineyard and Nantucket, as well as Boston's economically diverse South Shore. He came to Congress in 1997 with a distinguished career in public service and law enforcement and has since been reelected five times.

He serves as a member of the House Committee on Foreign Affairs and as Chairman of the Subcommittee on International Organizations, Human Rights, and Oversight

His committee conducts oversight of key aspects of the Bush Administration's foreign policy. Its jurisdiction includes oversight of the State Department, foreign aid and export assistance programs, arms control, democracy promotion and policies towards the United Nations and its affiliated organizations. The panel also has jurisdiction over policies that promote human rights and international cooperation.

Delahunt is also a member of the House Committee on Foreign Affairs Subcommittee on the Western Hemisphere. On this panel, Delahunt has worked to improve diplomatic relations throughout Latin America and to reverse the declining image of the United States in the region.

In recent years Delahunt negotiated an agreement to cut the cost of home heating oil delivered from Venezuela to low income families in the northeast. He has also led efforts to reassess policies created to promote democracy in the region, including travel restrictions imposed on Americans who seek to travel to Cuba.

As a member of the Judiciary Committee, Representative Delahunt brings two decades of experience as a prosecutor – and lifelong commitment to safeguarding civil rights – to the federal arena. As a District Attorney, his innovative approach included developing the first prosecutorial unit focused on domestic violence in the United States, and prototype programs to combat violence against women that became models for prosecutors nationally and abroad.

Rep. Delahunt also serves as co-chair of the bipartisan Coast Guard Caucus; House Older Americans Caucus; and the Congressional Working Group on Cuba. Rep Delahunt has championed a diverse range of legislative priorities from streamlining international adoptions to minimizing wrongful convictions.

Closer to home, Delahunt is helping the redevelopment of the South Weymouth Naval Air Station, working to expand marine transportation

services, and promoting economic development in areas such as renewable energy, "bio-fuels" and ocean technology. He is a strong booster of heritage tourism, wetlands restoration, and a fierce defender of the region's ocean sanctuaries and National Parks.

On Cape Cod, he led efforts to clean up the Massachusetts Military Reservation and the establishment of the 15,000 acre Upper Cape Water Supply Reserve to protect Cape Cod's water supplies. He also worked to save the base during the last round of BRAC and is helping to make it a regional center for homeland security. Delahunt has also secured funds to expand the region's public transportation system and bike trails while helping local health care clinics, including establishment of a new primary care center on the Cape and Islands for veterans.

Representing a coastal district, he has actively sought ways to promote collaboration and "consensus" between environmental and economic interests – such as, creating an innovative whale-safe gear program for local fisherman.

A 1963 graduate of Middlebury College in Vermont, Mr. Delahunt later went on to earn a law degree from Boston College in 1967. He served from 1963 to 1971 in the Coast Guard Reserve. The Congressman is the son of the late Ruth and Bill Delahunt Sr., a sales manager. He is a lifelong resident of Quincy, and the exceedingly proud father of Kirstin and Kara.



## About Congressman Watt

Melvin L. Watt ("Mel") was born in Mecklenburg County, North Carolina on August 26, 1945. He is a graduate of York Road High School in Charlotte. He was a Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill in 1967 with a BS degree in Business Administration and was president of the business honors fraternity as a result of having the highest academic average in the Business School. In 1970 he received a JD degree from Yale University Law School and was a published member of the Yale Law Journal. He has been awarded honorary degrees from North Carolina A&T State University, Johnson C. Smith University, Bennett College and Fisk University.

Mel practiced law from 1970-1992 and has been a small business owner.

Mel was the campaign manager of Harvey Gantt's campaigns for City Council, for Mayor of Charlotte and for the United States Senate. Mel served one term in the North Carolina Senate (1985-86) where he was called "the conscience of the Senate." He did not seek a second term in the state Senate and announced that he would not consider running for elective office again until his children completed high school.

Mel is married to Eulada Paysour Watt, an educator. They have two sons, Brian and Jason, both of whom are graduates of Yale University and have earned graduate degrees.

Mel is a member of the Mt. Olive Presbyterian Church and a life member of the NAACP. He served as president of the Mecklenburg County Bar and has been a member of many professional, community and civic boards and organizations.

In 1992, Mel was elected to the U.S. House of Representatives from North Carolina's 12th Congressional District and became one of only two African American members elected to Congress from North Carolina in the 20th century.

Mel is a member of the House Financial Services Committee where he serves on the Financial Institutions Subcommittee, the Domestic and International Monetary Policy Subcommittee and the Capital Markets, Insurance and Government Sponsored Enterprises Subcommittee. Mel is also on the House Judiciary Committee on which he is the Ranking Member on the Subcommittee on Commercial and Administrative Law. In December of 2004, Mel was unanimously elected Chairman of the Congressional Black Caucus.

Mel enjoys tennis, running, reading and music. Since 1995 he has been the starting pitcher for the Democratic baseball team in the annual Congressional Baseball Game and was named most valuable player in 1995, 1996 and 2000.





## Biography for Representative Steve Cohen Biography of Congressman Steve Cohen

Steve Cohen is a fourth-generation Memphian who has dedicated his life to public service. As a child stricken with polio, Steve's dreams of playing sports yielded to the other passion in his young world, politics. Filing to run for office on the same day he first registered to vote, Steve stepped onto the path that has defined his life and affected the lives of people in Memphis and across Tennessee throughout his career in national, state and local politics.

During his term as a Shelby County Commissioner, Steve cast one of the essential votes for the creation of the Med. This would be the first in a long line of votes during his career to fight for the most basic of human rights such as access to health care.

Steve's 24 years in the State Senate serving the citizens of Memphis provide a record of vigorous, passionate, honest and unselfish service that is unparalleled. He consistently stands up for the people who elected him, not for special interests. Steve has a well-deserved reputation for standing up and speaking out on important issues and has been called the father of the Tennessee Lottery which has produced over a half-billion dollars for education in just over two years.

He has provided outstanding constituent service to the citizens of Memphis. Steve Cohen has never faltered in his fight for those who do not have the power bestowed by wealth and advantage, realizing that the American dream cannot flourish without constant rededication to its principle. Steve Cohen now stands ready to serve the citizens of Congressional District 9 with the same ethics, vigor and dogged determination that have marked his life of public service.



Chris Cannon was elected to Congress on November 5, 1996, by defeating a three-term incumbent. Cannon was one of only three Republicans defeating Democrat incumbents in the 1996 election.

Cannon was born in Salt Lake City on October 20, 1950. After receiving a Bachelor of Science degree and a law degree from Brigham Young University, he worked in Provo as an attorney for four years.

In 1983, the Congressman was appointed by President Ronald Reagan as the lawyer in charge of coal mining reclamation, enforcement and writing the current regulatory scheme. During his tenure, Cannon supervised approximately 100 attorneys working on surface coal mining issues.

In this position, he helped move oversight of coal mine reclamation from the federal government to the states. In 1986, Cannon worked as a consultant to the Assistant Secretary for Productivity, Technology and Innovation at the Department of Commerce. In 1987, Chris with his brother, Joe, helped purchase and reopen Geneva Steel in Orem, Utah, restoring 2,500 steel worker jobs. In 1990, Chris purchased Geneva's new venture division, now called Cannon Industries, Inc.

In 1992, Chris served as the Utah Finance Chairman and on the National Finance Committee for President George Bush's reelection. From 1991-92, he served as Finance Chairman for the Utah Republican Party. Chris has served as a delegate to the Republican National Convention in 1992 and 1996. In the 1996 election, Chris was one of the five presidential electors.

Congressman Cannon was named Chairman of the House Judiciary Subcommittee on Commercial and Administrative Law at the beginning of the 108th Congress in January of 2003. As chairman, Congressman Cannon oversees legislation involving bankruptcy reform, privacy, interstate compacts and tort reform. He also serves on the Judiciary Subcommittee on Courts, the Internet, and Intellectual Property.

Additionally, Congressman Cannon is a member of the House Government Reform Committee. He serves on the Subcommittees on Criminal Justice, Drug Policy and Human Resources as well as Regulatory Affairs. Congressman Cannon is also a member of the House Resources Committee, serving on the Energy and Mineral Resources and Forests and Forest Health Subcommittees.

In January of 2003, Congressman Cannon was elected chairman of the influential Western Caucus, an organization of over 50 Congressmen leading the debate for rational, balanced and sound resource management.

Congressman Cannon married Claudia Fox in 1978. Claudia is a graduate of Brigham Young University with a degree in Elementary Education. She served a mission for the Church of Jesus Christ of Latter-day Saints in Spain and Rep. Cannon served as a missionary in Guatemala and El Salvador. They have eight children and reside in Mapleton, Utah.



## Biography for Representative Jim Jordan

### Representative's Official Biography

#### *Jim Jordan*

Jordan was raised in Champaign County, Ohio, graduating from Graham High School in 1982, where he was a four-time state champion in wrestling with a career record of 150-1. He went on to earn a Bachelor's Degree in Economics from the University of Wisconsin, where he was a two-time NCAA wrestling champion. He later earned a Master's degree in Education from the Ohio State University and a Law Degree from Capital University in Columbus, Ohio.



Jordan is a fiscal conservative who believes that families and taxpayers, rather than government, know best how to make decisions with their money. In the past ten years, Jim Jordan has led the fight against efforts to raise taxes, including tax increases proposed by leaders of his own political party. Jim Jordan believes that cutting taxes and letting families keep more of what they earn helps build strong communities and a vibrant economy.

Jim Jordan was named Pro-Life legislator of the Year from United Conservatives of Ohio and won the Defender of Life award from Ohio Right to Life for his unwavering commitment to protecting the sanctity of human life. He is a trusted leader on family issues like defending traditional marriage and giving parents the tools they need to help build a brighter future for their children.

Jim and his wife Polly are the parents of four children. The Jordan family lives near Urbana and attend Grace Bible Church.



**The Honorable Ric Keller  
United States Congressman (R-FL)**

**Biography**

Congressman Ric Keller, 42, was re-elected in November of 2006, to his fourth term in the U.S. House of Representatives. He represents the people of the 8th Congressional District, which covers the greater Orlando area and stretches from Celebration to Ocala.

Congressman Keller has served as the chairman, and now ranking member, of the House higher education subcommittee. As the only Floridian in Congress to serve on the House Education and Labor Committee, Congressman Keller is the state's point man on education issues in Washington.

Congressman Keller also sits on the House Judiciary Committee, where he has been a leading advocate of the COPS (Community Oriented Policing Services) program to put more law enforcement officers on our streets.

Congressman Keller was raised in Orlando, and graduated from Boone High School. He received his bachelor's degree from East Tennessee State University, where he graduated first in his class. He received his law degree from Vanderbilt University.

Ric resides in Orlando with his wife, Dee Dee. He has three children, Nick, Christy, and Kaylee.



## Representative Tom Feeney - Biography

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Representative Tom Feeney is proud to represent the 24th District of Florida, which covers portions of Brevard, Orange, Seminole, and Volusia counties. Feeney, elected in 2002, was previously Speaker of the Florida House of Representatives and was Governor Jeb Bush's running mate in his first race for governor in 1994.



Representative Feeney graduated in 1980 from Penn State University with a B.A. in Political Science and obtained his law degree from the University of Pittsburgh in 1983. Feeney made Central Florida home 23 years ago and in 1990, was elected to the Florida House of Representatives, where he served two terms before being chosen as Governor Bush's running mate.

As a young legislator, one of Feeney's primary goals was to expand choice and opportunities in kindergarten through 12th grade education. He quickly became one of Florida's leading advocates for educational choice. In August of 1992, the American Legislative Exchange Council (ALEC) voted him National Outstanding Legislative Member of the Year for his work on education reform.

In a special election in 1996, Feeney was returned to the Florida House of Representatives where he continued his activism on education and became one of the state's leading legislators on tort reform and welfare reform. His ideas on welfare reform have dramatically altered Florida's welfare system, resulting in over 500,000 Floridians leaving the state's welfare rolls and joining the workforce. Education reforms include increased spending on public education (52.5% of Florida's current budget) and a successful "A+ Education Plan."

On November 21, 2000, Tom Feeney was sworn in as Speaker of the Florida House of Representatives and in 2001 was ranked among the most effective legislators of the year by the Miami Herald. Tom Slade, past Chairman of the Republican Party of Florida said "Feeney is the most philosophically disciplined and principled member of state government that I've ever known."

In Congress, Feeney serves on the powerful Financial Services and Judiciary committees as well as the Science committee which oversees NASA, and serves as an Assistant Whip. In his first term in Congress, Feeney brought

commonsense principles from his service in Florida to the U.S. House of Representatives. His six principles: less government, lower taxes, personal responsibility, individual freedom, stronger families, and national defense gained popularity on Capitol Hill and became the guiding principles for the Republican Study Committee (RSC), the largest organization in the House of Representatives.

In his first term, Feeney successfully passed an amendment to the PROTECT Act to ensure tough sentences for child predators. Additionally, he led a reform of the tax code to allow Florida taxpayers to deduct the amount of sales tax they pay. To help restrain irresponsible spending, Representative Feeney co-founded the Washington Waste Watchers, a working group formed to combat waste, fraud, and abuse in federal government.

In his second term, Rep. Feeney introduced the COMPETE Act, legislation to restore America's lead in world capital markets and reduce the burdens of Sarbanes-Oxley on small businesses. In response to Florida's homeowners' insurance crisis, Feeney also introduced Catastrophe Savings Accounts which will empower homeowners to put away money tax-free to save and prepare for a disaster.

Feeney's most proud accomplishment of his second term was securing a Veterans Administration hospital for Central Florida, an area long underserved.

Rep. Feeney is a committed champion for NASA, fighting to protect Kennedy Space Center, space exploration and NASA funding. He fought to secure funding for the Crew Exploration Vehicle and Crew Launch Vehicle.

Representative Tom Feeney is consistently named a "Taxpayer Superhero" and "Taxpayers' Friend" by the Citizens Against Government Waste and the National Taxpayers Union respectively. For his stance on immigration and commitment to securing America's border, Feeney has been named to the U.S. Border Security Hall of Fame.

Tom is married to the former Ellen Stewart and they are the proud parents of two sons, Tommy and Sean Patrick. The Feeney family calls Oviedo, Florida home.



# Congressman Trent Franks

Trent is a conservative Reagan Republican, and he has spent most of his life working on children's issues and trying to build a better future for all children.

He is a former Member of the Arizona State House of Representatives where he was Chairman of the Subcommittee on Child Protection and Family Preservation. He was a high-profile sponsor of numerous bills designed to protect the family including the "Child Obscenity and Pornography Bill" (which survived major challenges in the U.S. Federal District Court) and the "Dangerous Crimes Against Children Bill". Both became nationally recognized.

Trent later oversaw all of Arizona's state programs for children when he became the Cabinet level Director of the Arizona Governor's Office for Children. This office is the equivalent of the Department for Children in other states. He was also Chairman of the Arizona State Children's Cabinet as well as Chairman of the Inter-Agency Study Committee on Children and AIDS.

Trent founded and served four and a half years as Executive Director of the Arizona Family Research Institute which is a non-profit organization associated with Dr. James Dobson's Focus on the Family for the purpose of advocating and advancing public policy to protect children and families in Arizona.

Trent Franks is serving his third term in Congress, representing the Second District of Arizona. He serves on the Armed Services Committee and the Judiciary Committee, where he is the ranking member of the Constitution Subcommittee. He chairs the House Republican Conference Voter Values Public Affairs Team and is a member of the Republican Study Committee, the House Working Group on Judicial Accountability, the Education Freedom Caucus, the House Working Group on Waste, Fraud and Abuse, the Congressional Hispanic Conference, the Liberty Caucus, the Human Rights Caucus and the India Caucus, the Anti-Terrorism Caucus, and is co-founder of the Israel Allies Caucus (IAC).

Representative Franks has committed his life to protecting children. He is passionate in his commitment to protecting innocent life, including that of unborn children.

Congressman Franks has a longstanding commitment to providing parental empowerment and educational choice for families. In 1997, he authored and was the leading advocate for the Arizona Scholarship Tax Credit. This incredibly successful program has helped provide scholarships for over 50,000 children in its 8 year history. In order to build on this success, Rep. Franks has introduced the Children's Hope Act in Congress. This act would encourage states to create their own scholarship tax credit by providing an additional federal credit for individuals who participate in a state scholarship tax credit of \$250 or more.

Representative Franks has received numerous honors since his arrival in Washington, including the Family Research Council's "True Blue Award," given to those who have "demonstrated extraordinary integrity and character in their defense of the family and the sanctity of human life...and hold perfect voting records on issues of importance to the American family," the "Spirit

of Enterprise" award from the U.S. Chamber of Commerce, the "Legislative Achievement Award" from the Seniors Coalition, the "Guardian of Seniors' Rights Award" from the 60 Plus Association, the "Constituent Communication Award" from National Write Your Congressman, the "2004 Medicare Choices Leadership Award" from the Coalition for Medicare Choices, a "Presidential Citation" from the President of the Philippines Gloria Macapagal-Arroyo, the "Thomas Jefferson Award" from the Food Industry, the "Tax Fighter Award" (100% rating) from the National Tax Limitation Committee, was named a "Small Business Advocate" by Americans for Tax Reform, 2004's "Lawmaker of the Year" by Independent Electrical Contractors, Inc., "Taxpayer Hero" by the Council for Citizens Against Government Waste, "Champion of Property Rights" (100% rating) by the League of Private Property Voters, "Friend of Farm Bureau" by the American Farm Bureau Federation, and he received the "Friend of Education Award" from the Education Freedom Coalition.

Mr. Franks and his wife Josephine have been married since 1980 and are members of North Phoenix Baptist Church.



MOSCHELLA ORAL  
STMT.

DAG000001182

William E. Moschella  
Principal Associate Deputy Attorney General  
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the seven U.S. Attorneys who were asked to resign last December. Each is a talented lawyer who served as U.S. Attorney for more than four years, and we have no doubt they will achieve success in their future endeavors – just like the 40 or so other U.S. Attorneys who have resigned for various reasons over the last six years.

Let me also stress that one of the Attorney General's most important responsibilities is to manage the Department of Justice. Part of managing the Department is ensuring that the Administration's priorities and policies are carried out consistently and uniformly. Individuals who have the high privilege of serving as presidential appointees have an obligation to carry out the Administration's priorities and policies.

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are duty bound not only to make prosecutorial decisions, but also to implement and further the Administration and Department's priorities and policy decisions. In carrying out these responsibilities they serve at the pleasure of the President and report to the Attorney General. If a judgment is made that they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

To be clear, it was for reasons related to policy, priorities and management – what has been referred to broadly as “performance-related” reasons – that these U.S. Attorneys were asked to resign. I want to emphasize that the Department – out of respect for the U.S. Attorneys at issue – would have preferred not to talk at all about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. In hindsight, perhaps this situation could have been handled better. These U.S. Attorneys could have been informed at the time they were asked to resign about the reasons for the decision.

Unfortunately, our failure to provide reasons to these individual U.S. Attorneys has only served to fuel wild and inaccurate speculation about our motives, and that is unfortunate because faith and confidence in our justice system is more important than any one individual.

That said, the Department stands by the decisions. It is clear that after closed door briefings with House and Senate members and staff, some agree with the reasons that form the basis for our decisions and some disagree – such is the nature of subjective judgments. Just because you might disagree with a decision, does not mean it was made for improper political reasons – there were appropriate reasons for each decision.

One troubling allegation is that certain of these U.S. Attorneys were asked to resign because of actions they took or didn't take relating to public corruption cases. These charges are dangerous, baseless and irresponsible. This Administration has never removed a U.S. Attorney to retaliate against them or interfere with or inappropriately influence a public corruption case. Not once.

The Attorney General and the Director of the FBI have made public corruption a high priority. Integrity in government and trust in our public officials and institutions is paramount. Without question, the Department's record is one of great accomplishment that is unmatched in recent memory. The Department has not pulled any punches or shown any political favoritism. Public corruption investigations are neither rushed nor delayed for improper purposes.

Some, particularly in the other body, claim that the Department's reasons for asking these U.S. Attorneys to resign was to make way for preselected Republican lawyers to be appointed and circumvent Senate confirmation. The facts, however, prove otherwise. After the seven U.S. Attorneys were asked to resign last December, the Administration immediately began consulting with home-state Senators and other home-state political leaders about possible candidates for nomination. Indeed, the facts are that since March 9, 2006, the date the Attorney General's new appointment authority went into effect, the Administration has nominated 16 individuals to serve as U.S. Attorney and 12 have been confirmed. Furthermore, 18 vacancies have arisen since March 9, 2006. Of those 18 vacancies, the Administration (1) has nominated candidates for six of them (and of those six, the Senate has confirmed three); (2) has interviewed candidates for eight of them; and (3) is working to identify candidates for the remaining four of them.

Let me repeat what has been said many times before and what the record reflects: the Administration is committed to having a Senate-confirmed U.S. Attorney in every single federal district.

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the Department has not asked anyone to resign to influence any public corruption case – and would never do so. Third, the Administration at no time intended to circumvent the confirmation process.

I would be happy to take your questions.



DRAFT  
Department of Justice



STATEMENT  
OF  
WILLIAM E. MOSCHELLA  
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL  
UNITED STATES DEPARTMENT OF JUSTICE  
BEFORE THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES  
CONCERNING  
"H.R. 580, RESTORING CHECKS AND BALANCES IN THE NOMINATION  
PROCESS OF U.S. ATTORNEYS"

PRESENTED ON

MARCH 6, 2007

Testimony  
of

William E. Moschella  
Principal Associate Deputy Attorney General  
U.S. Department of Justice

Committee on the Judiciary  
United States House of Representatives

"H.R. 580, Restoring Checks and Balances in the Nomination Process of U.S.  
Attorneys"

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys.

The Department of Justice opposes H.R. 580, the "Preserving United States Attorneys Independence Act of 2007" as presently drafted for the reasons set forth herein.

As the chief federal law-enforcement officers in their districts, our 93 U.S. Attorneys represent the Attorney General and the Department of Justice throughout the United States. U.S. Attorneys are not just prosecutors; they are government officials charged with managing and implementing the policies and priorities of the President and the Attorney General. The Attorney General has set forth key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and

the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. Unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. This accountability ensures compliance with Department policy, and is often recognized by the Members of Congress who write to the Department to encourage various U.S. Attorneys' Offices to focus on a particular area of law enforcement.

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

Given the reality of turnover among the United States Attorneys, our system depends heavily on the dedicated service of the career investigators and prosecutors. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state, and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks

to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees. For example, in the District of Minnesota and the Northern District of Iowa, the First Assistant took federal retirement at or near the same time that the U.S. Attorney resigned, which required the Department to select another official to lead the office.

At no time, however, has the Administration sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move forward—in consultation with home-State Senators—on the selection, nomination, confirmation and appointment of a new U.S. Attorney. Not once. In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 16 vacancies have occurred since that date.

This amendment has not changed our commitment to nominating candidates for Senate

confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 16 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

H.R. 580 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by

being confirmed by the Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected. H.R. 580 would not permit the Attorney General's authority under current law to be tested in practice.

Prior to last year's amendment, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases in which a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor a cleared individual. The new U.S. Attorney sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public

corruption investigation. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual. The appointment forced the Department to remove the case files from the U.S. Attorney's office and bring them to Washington. In the end, the Department expedited the nomination of the permanent U.S. Attorney and appointed him to replace the court-appointed individual pending his confirmation.

In a second case, occurring in 2005, the district court appointed as interim U.S. Attorney in South Dakota an individual who similarly was not a Department of Justice or federal employee and had never undergone the appropriate background check. As a result, the interim U.S. Attorney could have no access to classified information. The U.S. Attorney could not receive information from his district's anti-terrorism coordinator, its Joint Terrorism Task Force, or its Field Intelligence Group. In a post 9/11 world, this situation was unacceptable.

Despite these two notorious instances, in most cases, the district courts have simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges have recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

The Department's principal objection to H.R. 580 is that it would be inappropriate, and inconsistent with sound separation of powers principles, to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney. We are aware of no other agency where federal judges—members of a separate branch of government—appoint on an interim basis senior, policymaking staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

H.R. 580 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee. The Department, therefore, does not believe a case has been made to repeal the current authority for appointing interim U.S. Attorneys.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

Markers -  
Changes to HR 580

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